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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,756	11/12/2003	John T. Matthews	2003	7388
24264	7590	04/29/2009		
TIMOTHY J. MARTIN, P.C. 9250 WEST 5TH AVE LAKEWOOD, CO 80226			EXAMINER AYRES, TIMOTHY MICHAEL	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 04/29/2009	DELIVERY MODE PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN T. MATTHEWS and TIMOTHY J. MARTIN

Appeal 2008-3969
Application 10/712,756
Technology Center 3600

Decided:¹ April 29, 2009

Before WILLIAM F. PATE, III, JENNIFER D. BAHR, and MICHAEL W.
O'NEILL, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

John T. Matthews and Timothy J. Martin (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-9, 12-14, 17, 18, 22, 24-31, 35, and 36. Claims 10, 11, 19-21, and 32-34 are withdrawn. Claims 15, 16, and 23 are canceled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

The claimed invention is to a collapsible canopy. Spec. 1, 1. 3.

Claims 1 and 22, reproduced below, are representative of the subject matter on appeal.

1. An expandable framework adapted to move between an expanded state for supporting a canopy covering above a support surface and a collapsed state for storage, comprising:

(A) a plurality of upright support members each having a bottom end portion positionable on the support surface and a top end portion opposite the bottom end, said support members being oriented alongside one another in the collapsed state and spaced apart from one another when in the expanded state;

(B) upper and lower mounts disposed on each corner support member, at least some of said upper and lower mounts including a lobe having outwardly facing, spaced-apart and substantially parallel sidewalls;

(C) a plurality of edge scissor assemblies with there being an edge scissor assembly interconnecting peripherally adjacent ones of said corner support members, each edge scissor assembly including a pair of

outer upper ends and a pair of outer lower ends, said edge scissor assemblies operative to open and close whereby said expandable framework may move between the expanded and collapsed states, at least some of said outer upper ends and said outer lower ends provided with a socket fitting including spaced apart portions that are spaced apart from one another to define a channel opening therebetween that is adapted to mateably engage a respective said lobe in close-fitted engagement, and with at least one of said portions having a substantially flat face thereby to form sliding contact surface with the respective said lobe;

(D) each said edge scissor assembly including a pair of scissor units connected in end-to-end relation by an upper center fitting interconnecting the upper inner ends of said scissor units together and a lower center fitting interconnecting the lower inner ends of said scissor unit together, each of said upper and lower center fittings including oppositely projecting fitting lobes that are longitudinally offset from one another, said upper and lower inner ends of said scissor units being provided with a socket fitting including spaced apart first and second arm portions having substantially parallel opposed face portions defining a channel opening therebetween that are adapted to mateably receive a respective said fitting lobe of a respective said upper and lower center fittings in close-fitted engagement thereby to form sliding contact surfaces therewith; and

(E) a fastener securing each said lobe for pivotal movement in the respective said socket fitting.

22. An expandable canopy adapted to be erected on a support surface, comprising:

(A) a framework adapted to rest on a support surface and adapted to move between an expanded state for use and a collapsed state for storage, said framework including:

(1) a plurality of upright support members each having a bottom end portion positionable on the support surface and a top end portion opposite the bottom end, said support members being oriented alongside one another in the collapsed state and spaced apart from one another when in the expanded state;

(2) upper and lower mounts disposed on each corner support member, at least some of said upper and lower mounts including a lobe having outwardly facing, spaced-apart and substantially parallel sidewalls and terminating in a rounded end;

(3) a plurality of edge scissor assemblies each constructed by at least one pair of scissor bars pivotally connected to one another with there being an edge scissor assembly interconnecting peripherally adjacent ones of said corner support members, each edge scissor assembly including a pair of outer upper ends and a pair of outer lower ends, said edge scissor assemblies operative to open and close whereby said expandable framework may move between the expanded and collapsed states, at least some of said outer upper ends and said outer lower ends provided with a socket fitting including first and second arm portions extending for a common length to terminate in rounded arm ends and having substantially parallel opposed face portions that are spaced apart from one another to define a channel opening therebetween that is adapted to mateably engage a respective said lobe in close-fitted engagement with each of the face portions forming sliding contact surfaces with the respective said lobe and with a female cavity mountably receiving an end portion of a respective said scissor bar,

(4) a fastener securing each said lobe for pivotal movement in the respective said socket fitting, and

(5) a roof support assembly supported above the support surface by said upright support members when said framework is in the expanded state; and

(B) a canopy covering sized and adapted to extend across said framework and be supported by said roof support assembly when said framework is in the expanded state.

THE PRIOR ART

The Examiner relies upon the following as evidence of unpatentability:

Call	US 2,723,673	Nov. 15, 1955
Lynch	US 5,244,001	Sep. 14, 1993
Losi	US 5,701,923	Dec. 30, 1997
Dwek	US 5,884,647	Mar. 23, 1999
Chiu	US 2004/0084074 A1	May 6, 2004

THE REJECTIONS

The following Examiner's rejections are before us for review:

Claims 22, 24-26, 30, 35, and 36 are rejected under 35 U.S.C.

§ 102(e) as being anticipated by Chiu.

Claims 1-9, 12-14, 17, 18, 22, 24-31, 35, and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lynch, Call, and Losi.

Claims 22, 24-31, 35, and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lynch, Call, and Dwek.

The Appellants assert that claims 1 and 22 stand alone. As such, if claim 1 falls, then so do claims 2-9, 12-14, 17, and 18. If claim 22 falls, then so do claims 24-31, 35, and 36. App. Br. 11.

ISSUES

Issue (1)

With regard to the anticipation rejection of claim 22, the Appellants contend that Chiu fails to describe the following claimed subject matter:

1. “A lobe having outwardly facing, spaced-apart and substantially parallel sidewalls and terminating in a rounded end.”
2. A “socket fitting including first and second arm portions extending for a common length to terminate in rounded arm ends and having substantially parallel opposed face portions.”
3. The “lobe is in close-fitted engagement with each of the face portions forming sliding contact surfaces with respective said lobe.”

App. Br. 13.

The Examiner finds Chiu’s lobe assembly 52, that is composed of lobe 54 and sheath 56, terminates in a rounded end because of the rounded corners. Ans. 23. Further, the Examiner finds that the entire lobe assembly 52 (lobe 54 and sheath 56) reads on the claimed lobe subject matter because claim 22 does not require the claimed lobe to be a “single integrally manufactured element.” Ans. 24.

For this rejection, the issue is:

Have the Appellants shown reversible error in the Examiner finding that Chiu describes 1) a socket fitting that includes first and second arm portions extending for a common length to terminate in rounded arm ends and having substantially parallel opposed face portions, and 2) a lobe having outwardly facing, spaced-apart, and substantially parallel sidewalls and terminating in a rounded end, wherein the lobe is in close-fitted engagement

with each of the socket's face portions to form sliding contact surfaces with the lobe?

Issue (2)

With regard to the obviousness rejection of claim 1 as unpatentable over Lynch, Call, and Losi, the Appellants state that the claim requires each of the upper and lower center fittings including oppositely projecting fitting lobes that are longitudinally offset from one another. The Appellants contend that the Examiner erred in combining Lynch and Call to find this claim requirement obvious because 1) there is no reasonable, non-hindsight motivation to combine the center fittings of Lynch with the Call structure, 2) “[t]o do so would result in a canopy frame with rigid connections between the scissor units,” (App. Br. 11), and thus, 3) the intended purpose of Lynch being collapsible would be destroyed. The Appellants contend that the Examiner combining Lynch's components with non-analogous structures of Losi is illogical in order to satisfy the center fitting subject matter within claim 1. In the Appellants' view, the most analogous Losi structure to the claimed center fitting is the pivotal joint of the scissor type linkages and these linkages are not described as being located in the center. To this point, the Appellants state that Losi contemplates a bolt or pin to connect the scissor units. App. Br. 12. The Appellants contend that if a person having ordinary skill in the art would combine the teachings of Losi and Lynch, the result would simply be connecting the scissor units of Lynch with a pin or bolt as shown in Losi. App. Br. 12.

The Examiner responds with the explanation that Lynch's center fittings are not being combined with a particular structure in Call. The Examiner states that Lynch's center fittings are being either modified or

replaced with Losi's fittings. The Examiner also responds to the Appellants' non-analogous contention with the position that Lynch and Call are analogous structures because they perform the same function on a collapsible canopy. Ans. 22.

For this rejection, the issue is:

Have the Appellants shown reversible error in the Examiner's conclusion that the subject matter within claim 1 is obvious in view of the combined teachings of Lynch, Call, and Losi, because Lynch, Call, and Losi cannot be combined and the combined teachings do not result in a center fitting including oppositely projecting fitting lobes that are longitudinally offset from one another?

Issue (3)

With regard to the obviousness rejection of claim 22 as unpatentable over Lynch, Call, and Losi, the Appellants contend that the Examiner erred in determining that the following claimed subject matter is described in the combination of Lynch, Call, and Losi:

- 1) "[A]t least some of said upper and lower mounts including a lobe."
- 2) The edge scissor assemblies are "each constructed by at least one pair of scissor bars pivotally connected to one another."
- 3) The scissor assemblies' end portions have socket fittings that have substantially parallel opposed face portions that terminate in rounded arm ends, and the lobes on the upper and lower mounts terminate in rounded ends.
- 4) "[T]he socket fittings have a female cavity mountably receiving an end portion of a respective scissor bar."

App. Br. 14.

The Examiner posits Lynch, Call, and Losi teach all of the claimed limitations enumerated by the Appellants in the Brief, and the application of Losi to Lynch and Call yields predictable results. Ans. 24.

For this rejection the issue is:

Have the Appellants shown reversible error in the Examiner determining that the combination of Lynch, Call, and Losi teaches that 1) the upper and lower mounts have a lobe that has rounded ends, 2) the scissor assemblies are each constructed by a pair of scissor bars pivotally connected to one another, wherein the end portions of the scissor assemblies have socket fittings, and 3) the socket fittings have substantially parallel opposed face portions that terminate in rounded arm ends and have female cavities to receive the end portion of a respective scissor bar?

Issue (4)

With regard to the obviousness rejection of claim 22 as unpatentable over Lynch, Call, and Dwek, the Appellants contend that the combined teachings of Lynch, Call, and Dwek fail to show:

- 1) “[A]t least some of said upper and lower mounts including a lobe,” wherein lobe terminates with a rounded end.
- 2) The edge scissor assemblies are “each constructed by at least one pair of scissor bars pivotally connected to one another.”
- 3) Scissor assemblies having socket fittings on the outer upper ends and outer lower ends, wherein the socket fittings terminate in rounded arm ends, have substantially parallel opposed face portions, and have a female cavity to receive an end portion of a scissor bar.

App. Br. 14-15. The Appellants further contend that applying the teachings of Dwek “would unnecessarily complicate the assembly of [Lynch’s] canopy frame.” *Id.* at 15. In addition, the Appellants contend that the structures in Call and Dwek are non-analogous to the Lynch structure. *Id.*

The Examiner responds by stating that Lynch is similar to the major aspects of the claimed subject matter and “just has minor connection changes (reversed lobes, sockets, female cavity, rounded lobes, etc.) that are [taught] in Call, Losi, Dwek, or [Chiu],” and “each modified component will function in the predictable manner as taught in each reference....” Ans. 25.

For this rejection, the issue is:

Have the Appellants shown reversible error in the Examiner determining that Lynch, Call, and Dwek can be combined and the combined teachings of Lynch, Call, and Dwek to show: 1) upper and lower mounts that have a lobe wherein the lobe terminates with a rounded end, 2) a scissor bar pair pivotally connected together, and 3) socket fittings on the scissor assemblies’ ends, wherein the socket fittings terminate in rounded arm ends, have substantially parallel opposed face portions, and have a female cavity to receive the end portion of a scissor bar?

FINDINGS OF FACT

We find that the following enumerated findings of fact are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Chiu discloses a canopy support. Chiu, Abstract. Figure 3 is a partially exploded, perspective view of an upper end portion of the

- support. *Id.* at 2, para. [0018]. This view shows a stationary mount 30 and a slideable mount 32. Both mounts 30 and 32 have a pair of flange assemblies 52. Flange assemblies 52 are constructed from a flange 54 and a plastic sheath 56. *See Id.* at 2, para. [0035]. As shown in figure 3, both flange 54 and sheath 56, which constitute flange assembly 52, have spaced apart planar sidewalls that terminate in rounded corners.
2. As shown in Chiu's figure 3, forked socket 58 is composed of arms 76 and 78, on one side, and aperture 84 on the other. As described in Chiu, a flange assembly 52 is inserted into a slot formed by the socket's 58 arms 76 and 78. Chiu 2, para. [0036]. Figure 3 shows three of the flange assemblies 52 inserted into the slots formed by forks 76 and 78. The face surfaces of the respective parts appear to be in contact with each other, less the rounded corners on the flange assembly 52. Additionally, as shown in figure 3, a single bolt 60 secures together a flange assembly 52 to a forked socket 58 and arcuate reference label arrows are present for the three assembled structures shown in the figure.
 3. In figures 12 and 13, Lynch discloses a perspective and bottom plan view of floating mount 64. As shown in figure 2b, floating mounts 64 and 65 connect the scissor assemblies between the upright support members 24. As shown in figure 13, a floating mount has channel shaped sockets 210 that are offset with respect to the centerlines that would follow the T-shape of the float mount.
 4. In figures 3 and 4, Call describes castings 31 that have three rounded-end lugs 34, 35, and 36. The lugs receive bifurcated castings 43, 44,

- and 45. Bolts serve to attach pivotally the bifurcated castings to the lugs. Lynch, col. 4, ll. 13-24. For coupling the free ends of the diagonal members 14, Calls describes a cross-shaped coupling assembly 50, shown in figures 1, 2, and 5. The assembly is composed of a casting 51 having radially extending lugs 52, 53, 54, and 55 that receive bifurcated castings 60, 61, 62, and 63. Bolts serve to attach pivotally these castings to these lugs. *Id.* at col. 4, ll. 56-68.
5. Losi describes a collapsible shelter. The collapsible shelter is composed of a plurality of upwardly extending poles 1 that are connected by sets of scissor-type linkages 2. The canopy support rods 3 are connected to the top of extending poles 1. Losi, col. 4, ll. 5-19 and fig. 1. As shown in figures 3, 7, and 13, each canopy support rod 3 comprises two rods pivotally connected together by an intermediate pivot connector 31. The intermediate pivot connector 31 includes pivot members 311 (lobes) that are composed of two parallel walls with rounded corners and mate with the three parallel wall of the ends 32 of the canopy support rod 3. *Id.* at col. 4, l. 66 to col. 5, l. 6. The resultant connection permits the canopy support rods 3 to pivot around their respective intermediate pivot members 311.
6. Dwek describes a folding structure 16 composed of a plurality of elongated posts 18, truss members 20, and connectors 22 in order to form a fully assembled collapsible enclosure. Dwek, col. 3, ll. 4-14 and fig. 1. As shown in figure 4, each connector 22 is composed of a rail fitting 26 that consists of a swivel bar 32 and a pair of sockets 34. Each socket has an aperture end (unnumbered) to receive a truss member 20 and a forked end 36 that fits over the swivel bar 32. Pairs

of pins 38 and thumbscrews 40 connect the swivel bar 32 to sockets
34. *Id.* at col. 3, ll. 26-35.

PRINCIPLES OF LAW

“Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a proper construction of the claims. . . . The second step in the analyses requires a comparison of the properly construed claim to the prior art.” *Medichem, S.A. v. Rolabo, S.L.*, 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted).

We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims “their broadest reasonable interpretation consistent with the specification” and “in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

“Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention.” *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444 (Fed. Cir. 1984). However, it is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007). A prima facie

conclusion of obviousness may be supported by a showing that the claims are directed to a process, machine, manufacture, or composition of matter already known in the prior art that is altered by the mere substitution of one element for another known in the field, and such modification yields a predictable result. *See Id.* (citing *United States v. Adams*, 383 U.S. 39, 40).

The Supreme Court further stated that:

[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 417.

As such, when considering obviousness of a combination of known elements, the operative question is “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.* at 401.

To this end, obviousness does not require that all of the features of the secondary reference be bodily incorporated into the primary reference. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Nor is the artisan compelled to blindly follow the teaching of one prior art reference over the other without the exercise of independent judgment. *Lear Siegler, Inc. v. Aeroquip Corp.*, 733 F.2d 881, 889 (Fed. Cir. 1984).

Thus, while there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences

and creative steps that a person of ordinary skill in the art would employ.”
KSR, 550 U.S. at 418.

ANALYSIS

Issue (1)

As shown in Chiu’s figure 3, the flange assemblies consist of parallel sidewalls separated by a bight. The bight at the end of the lobe that is distal from the upright support is shown as curved. Fact 1. As such, Chiu’s flange assembly satisfies the claimed subject matter of the lobe having an outwardly facing, spaced-apart and substantially parallel sidewalls that terminate in rounded ends.

Further, as shown in Chiu’s figure 3, the forked socket has forked arms on one end and a female cavity on the other end. The bight portion that creates an arm’s thickness is rounded at the corners. Fact 2. As such, Chiu’s forked socket satisfies the claimed subject matter of the socket fitting, including first and second arm portions extending for a common length to terminate in rounded arm ends, and where the arms have parallel opposed face portions.

Chiu’s figure 3 shows three of the lobes and forked sockets connected together by bolts. This figure additionally shows arcuate reference label arrows proximate to the shown assembled lobe-forked socket combination. The surfaces of each lobe and forked socket are in contact with each other, less the rounded corners of each structure, and also appear to pivot around the bolt connecting the lobe and forked socket together. Fact 2. As such, Chiu’s connection of the lobe to the forked socket satisfies the claimed

subject matter of the lobe being in a closed-fitted engagement with the face portions of the socket to form sliding contact surfaces with the lobe.

In view of the foregoing reasons, the Appellants have not shown that the Examiner erred in rejecting claim 22 as anticipated by Chiu. Claims 24-26, 30, 35, and 36 fall with claim 22.

Issue (2)

The record shows that the individual parts of the claimed center fitting are taught by Lynch, Call, and Losi. For instance, Lynch describes a center fitting having an offset for the attachment of members. Fact 3. Call teaches lobes on the mounts and forked sockets on the members. Fact 4. Losi teaches that it is possible to have on a center fitting, a lobe, instead of a channel as shown in Lynch, and the channels, e.g., the parallel faced portions, on the member. Fact 5. As such, the combined teachings of Lynch, Call, and Losi evidence that the individual parts comprising the claimed center fitting are a combination of familiar elements to a person having ordinary skill in the art. Accordingly, the question becomes whether there is evidence in the record that this combination of familiar elements achieves something more than a predictable result. *KSR*, 550 U.S. at 416.

The Specification provides no evidence of unpredictability when the individual elements that constitute the center fitting are combined to form the center fitting through known methods. Nor have the Appellants proffered evidence of unpredictability from the claimed center fitting. As such, the combination of familiar elements shown in Lynch, Call, and Losi when combined appear to be a product not of innovation but of ordinary skill and common sense and thus obvious. *Id.* at 418.

Moreover, the Appellants have not proffered evidence to show that the modification or replacement of Lynch's center fitting would have been beyond the technical grasp of a person having ordinary skill in the art and we are unconvinced that Lynch, Call, and Losi could not be combined. "A person of ordinary skill is also a person of ordinary creativity, not an automaton." *Id.* at 421. We thus conclude that the substitution would have been obvious to a person of ordinary skill in the art at the time of the Appellants' invention.

In view of the foregoing, the Appellants have failed to demonstrate that the Examiner erred in determining that the combined teachings of Lynch, Call, and Losi would have prompted a person having ordinary skill in the art to modify or replace the Lynch center fitting with the Losi center fitting.

Issue (3)

As with issue (2) *supra*, Lynch, Call, and Losi describe the individual parts (see Facts 3-5), e.g., the rounded-end lobes (the lugs), scissor assemblies, socket fittings terminating with rounded arm ends on one side and cavities on the other end (Call's castings 51 in combination with Losi's ends 32 that have cavities 32 for rods 3), that when combined together satisfy the subject matter recited in claim 22. As such, the combined teachings of Lynch, Call, and Losi evidence that the claimed subject matter is a combination of familiar elements to a person having ordinary skill in the art. Accordingly, like issue (2), the question becomes whether there is evidence in the record that this combination of familiar elements achieves something more than a predictable result. *KSR*, 550 U.S. at 416.

Neither the Specification nor the Appellants provide evidence of unpredictability from the subject matter within claim 22. Instead, the Appellants contend that an enumerated series of claimed structures are not present within the references and then conclusorily state that a *prima facie* case requires the references to teach or suggest all the claim limitations. App. Br. 14. This argument fails to take into consideration the ingenuity of a person having ordinary skill in the art. “A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 421. In our view, the combination of familiar elements as shown in Lynch, Call, and Losi when combined appear to be a product not of innovation but of ordinary skill and common sense and thus obvious. *Id.* at 418.

Moreover, the Appellants have not proffered evidence to show that using the teachings of Call to reverse the fittings and place the lobes on the mounts and the socket fittings on the scissor bars, in addition to using the teachings of Losi to have female cavities for receiving the end portions of the scissor bars, would have been beyond the technical grasp of a person having ordinary skill in the art. We thus conclude that the reversal and minor modifications to the contended parts would have been obvious to a person of ordinary skill in the art at the time of the Appellants’ invention.

In view of the foregoing, the Appellants have failed to demonstrate that the Examiner erred in determining that the combined teachings of Lynch, Call, and Losi would have prompted a person having ordinary skill in the art to modify Lynch by reversing the fittings and placing the lobes on the mounts and the socket fittings on the scissor bars from the teachings of Call, and then further modify that combination by the teachings of Losi’s

lobe and socket structure as the Examiner proposed in the rejection. *See* Ans. 13-16.

Issue (4)

As with both issues (2) and (3) *supra*, the series of enumerated structures that the Appellants contend are absent from the references are actually present in individual components (see Facts 3, 4, and 6), that when combined, satisfy a claimed component-assembly. For example, the claim requires the mounts to include rounded end lobes. Lynch's mounts end with socket fittings. Call's mounts end with rounded-end lobes, *viz.*, the lugs. Call's bars end with forked socket fittings. As such, combining the Lynch and Call teachings becomes a simple reversal of the lobes onto the upper and lower mounts of Lynch and the forked socket fittings on the Lynch scissor bar. Accordingly, the combined teachings of Lynch, Call, and Dwek evidence that the individual parts combined to reach the claimed component-assembly, e.g., a rounded-end lobe on a mount, are no more than a combination of familiar elements to a person having ordinary skill in the art. As above, the question again becomes whether there is evidence within the record to show that this combination of familiar elements achieves something more than a predictable result. *KSR* at 416.

Neither the Specification nor the Appellants provide evidence of unpredictability from the subject matter within claim 22. Instead, the Appellants focus their arguments on the absence of claimed structure without taking into account that no one reference has been asserted by the Examiner to satisfy the whole of a particular claimed feature. It is the combined teachings together that satisfy a particular claimed feature that the Appellants have enumerated as absent. In addition, the Appellants provide

conclusory statements that: one skilled in the art would not be motivated to combine the teachings of Lynch, Call, and Dwek; making the combination would unnecessarily complicate the Lynch assembly, thus destroying one of its advantages, and thusly, creating a disincentive to make any modification to Lynch; and further, that the Examiner has relied on hindsight to, in the Appellants' view, select components from nonanalogous structures. App. Br. 15.

In our view, the Examiner has not used hindsight, but instead has articulated a reason to combine the teachings of Lynch, Call, and Dwek with some rational underpinning to support the Examiner's conclusion of obviousness. *See* Ans. 20-21. Answering the Appellants' contention that the combined teachings make Lynch unnecessarily complicated or that Lynch, Call, and Losi could not be combined "[a] person of ordinary skill is also a person of ordinary creativity, not an automaton." *KSR*, 550 U.S. at 421. Additionally, the bodily incorporation of one reference into another is not a basis for the test of obviousness. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). *See also In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983) ("[I]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review"); and *In re Nievelt*, 482 F.2d 965, 968 (CCPA 1973) ("Combining the *teachings* of references does not involve an ability to combine their specific structures.") In other words, as the Supreme Court has admonished, "if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill." *KSR*, 550 U.S. at 417.

Further, the Appellants have not proffered evidence to show that the Examiner's proposed modifications to Lynch from the teachings of Call and Dwek would have been beyond the technical grasp of a person having ordinary skill in the art. In our view, the combination of familiar elements as shown in Lynch, Call, and Dwek when combined appear to be a product not of innovation, but of ordinary skill and common sense, and thus obvious. *KSR*, 550 U.S. at 418. Thus, we conclude that the reversal of the fittings and the use of sockets with female cavities would have been obvious to a person of ordinary skill in the art at the time of the Appellants' invention.

In view of the foregoing, the Appellants have failed to demonstrate that the Examiner erred in determining that the combined teachings of Lynch, Call, and Dwek would have prompted a person having ordinary skill in the art to modify Lynch by reversing the fittings and having the lobes on the mounts and the socket fittings on the scissor bars from the teachings of Call, and then further modifying that combination by the teachings of Dwek as the Examiner proposed in the rejection. *See* Ans. 20-21.

CONCLUSIONS

The Appellants have not shown that the Examiner erred in finding that Chiu describes 1) a socket fitting that includes first and second arm portions extending for a common length to terminate in rounded arm ends, and having substantially parallel opposed face portions, 2) a lobe having outwardly facing, spaced-apart, and substantially parallel sidewalls, terminating in a rounded end, wherein the lobe is in close-fitted engagement with each of the socket's face portions to form sliding contact surfaces with the lobe.

The Appellants have not shown that the Examiner erred in concluding that the subject matter within claim 1 is obvious in view of the combined teachings of Lynch, Call, and Losi, because the combined teachings do not result in a center fitting including oppositely projecting fitting lobes that are longitudinally offset from one another or that the Examiner erred in combining the teachings of Lynch, Call, and Losi.

The Appellants have not shown that the Examiner erred in determining that the combination of Lynch, Call, and Losi teach that 1) the upper and lower mounts have a lobe that has rounded ends, 2) the scissor assemblies are each constructed by a pair of scissor bars pivotally connected to one another wherein the assemblies' end portions have socket fittings, and 3) the socket fittings have substantially parallel oppose face portions that terminate in rounded arm ends, and have female cavities to receive the end portion of a respective scissor bar.

The Appellants have not shown that the Examiner erred in determining that the combined teachings of Lynch, Call, and Dwek fail to show: 1) upper and lower mounts that have a lobe wherein the lobe terminates with a rounded end, 2) a scissor bar pair pivotally connected together, and 3) socket fittings on the scissor assemblies' ends, wherein the socket fittings terminate in rounded arm ends, have substantially parallel opposed face portions, and have a female cavity to receive the end portion of a scissor bar or that the Examiner erred in combining the teachings of Lynch, Call, and Losi.

DECISION

The Examiner's decision to reject claims 22, 24-26, 30, 35, and 36 under 35 U.S.C. § 102(e) as being anticipated by Chiu is affirmed.

The Examiner's decision to reject claims 1-9, 12-14, 17, 18, 22, 24-31, 35, and 36 under 35 U.S.C. § 103(a) as being unpatentable over Lynch, Call, and Losi is affirmed.

The Examiner's decision to reject claims 22, 24-31, 35, and 36 under 35 U.S.C. § 103(a) as being unpatentable over Lynch, Call, and Dwek is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

mls

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